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AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
U S WEST COMMUNICATIONS, INC. A  
COLORADO CORPORATION, FOR A HEARING  
TO DETERMINE THE EARNINGS OF THE  
COMPANY, THE FAIR VALUE OF THE  
COMPANY FOR RATEMAKING PURPOSES,  
TO FIX A JUST AND REASONABLE RATE OF  
RETURN THEREON AND TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP SUCH  
RETURN.

DOCKET NO. T-01051B-99-0105

RESPONSE OF STAFF TO THE  
JOINT MOTION OF AT&T AND  
COX TO RECONSIDER  
PROCEDURAL SCHEDULE

## I. INTRODUCTION

On November 15, 2000, AT&T Communications of the Mountain States, Inc. ("AT&T") and Cox Arizona Telcom, L.L.C. ("Cox") filed a Joint Motion requesting reconsideration of the schedule adopted in the Commission's October 17, 2000 Procedural Order for evaluating the Qwest Corporation ("Qwest") rate case settlement with Staff. In their Motion, AT&T and Cox requested postponement of the evidentiary hearing currently scheduled to commence on November 29, 2000. Following is Staff's response to the AT&T and Cox Motion.

## II. SUMMARY OF POSITION

Staff has worked very hard in this case to ensure that any settlement negotiations were open to all parties and that all parties, including AT&T and Cox, were afforded a meaningful opportunity to participate. Both Staff and Qwest are still willing to talk to parties and attempt to meet parties' concerns to the extent possible. However, absent continued negotiations between the parties, Staff believes that the substantive concerns raised by AT&T and Cox can best be addressed through the evidentiary hearing process. Accordingly, Staff stands ready and able to comply with the current procedural schedule. As far as the scheduling and due process issues raised by AT&T and Cox, Staff believes they are best left to the sound discretion of the presiding Administrative Law Judge, and Staff will defer to the ALJ's judgment on these issues.

### III. DISCUSSION

#### A. The Settlement Discussions Were Open and All Parties Were Given a Meaningful Opportunity to Participate.

In their Motion, AT&T and Cox allege that the Settlement Agreement was not the product of negotiations involving all interested parties and was not the subject of an open and deliberative process. Motion at p. 2. The Joint Movants go on to state that “[a]ll parties other than Qwest and Commission Staff – including the Residential Consumer Utility Office – were excluded from the settlement negotiations.” *Id.* Staff strongly disagrees with these assertions.

While Staff and Qwest had several meetings to discuss a potential settlement before including the other parties, the purpose of those meetings was to see if settlement was even possible between the Staff and Qwest. Staff believed it would be counterproductive to include all parties before knowing whether it and the Company would even be able to come to agreement. As soon as it appeared settlement was possible between Staff and the Company, however, Staff had its Consultants draw up Principles of Settlement and an outline of the proposed Price Cap Plan parameters. The Principles of Settlement and accompanying Price Cap Plan parameters were then distributed to all of the parties.

The following week Staff invited all of the parties in to discuss the Settlement Principles and Price Cap Plan proposal with Staff, its Consultants and Qwest. Both Cox and AT&T met with Staff and Qwest that week to go over the plan and express their concerns. Throughout this whole process, Staff made it abundantly clear to the parties, that both Staff and Qwest were willing to sit down and talk and negotiate new terms and conditions and/or modifications to existing terms and conditions, to meet their concerns and ensure meaningful participation.

Indeed, additional terms and conditions were added, and existing provisions were modified, as a result of the initial meetings with the parties. The Communications Workers of America signed on to the Settlement Agreement after the meetings; and agreement has just been reached between Qwest and another party which will soon be filed as an addendum to the Settlement Agreement.

Staff also followed up with the parties after the initial meetings and requested a list of their concerns or recommended changes in writing. Staff received written concerns from several parties

1 including Cox and AT&T. As a result of those written concerns, Staff and Qwest incorporated yet  
2 additional modifications, terms and conditions into the Settlement Agreement and proposed Price  
3 Cap Plan.

4 The Settlement Agreement and proposed Price Cap Plan were docketed on October 20, 2000,  
5 at which time both documents became available to the public at large for inspection. Staff continued  
6 to encourage parties to enter into discussions with it and Qwest to see if agreement could be reached.  
7 Staff and Qwest remain willing to meet and talk to parties, including AT&T and Cox, about their  
8 concerns. In short, Staff has worked very hard to ensure that the settlement negotiations in this case  
9 were open and that all parties were afforded a meaningful opportunity to participate, as has the  
10 Hearing Division. The procedural schedule in this case was established over a month ago along with  
11 an aggressive discovery schedule which required one (1) day turn-around on all discovery requests  
12 related to the Settlement Agreement. Nonetheless, there has been very little discovery submitted to  
13 Staff or Qwest on the proposed Settlement.

14 It was never Staff's intent to conduct its negotiations in a manner that thwarted the  
15 opportunity for effective participation by any party or the public. Indeed, one of Staff's paramount  
16 concerns throughout this whole process has been to ensure that it is an open process and that all  
17 parties have a meaningful opportunity to participate in the settlement discussions. Staff has gone out  
18 of its way to make sure that all parties' concerns were heard.

19 Contrary to what is alleged, Staff is not trying to rush anything through the Commission  
20 before it has been subject to full scrutiny and participation by all interested parties. Price cap  
21 regulation is a major change of direction for the telecommunications industry in Arizona and Staff  
22 believes that all parties should have a full and fair opportunity to provide input on any form of  
23 alternative regulation adopted. The form of price cap regulation included in the Settlement  
24 Agreement is quite similar to the recommendations of Staff witness Shooshan in Direct Testimony,  
25 which have been fully documented in the record in this proceeding so as to afford all parties the  
26 opportunity to fully address alternative regulation issues. AT&T and Cox are very important  
27 participants in Arizona's telecommunications markets and in many Commission proceedings are  
28 helping to shape Arizona's telecommunications market into a level competitive playing field. The

1 Staff takes their concerns very seriously and is not in any way attempting to thwart their ability to  
2 effectively participate as alleged. The Staff and Qwest are still willing to negotiate with AT&T and  
3 Cox to see if their concerns can be met, but barring that, Staff believes that the process already put  
4 in place by the Hearing Division, including an evidentiary hearing on the Settlement Agreement, will  
5 best afford AT&T and Cox as well as other interested parties, a full and fair opportunity for input  
6 on the Agreement.

7 **B. Absent Continued Negotiation Between the Parties, the Specific Issues Raised**  
8 **by AT&T and Cox Would be Best Addressed through the Evidentiary Hearing**  
9 **Process.**

10 Absent continued negotiations between the parties, to see if agreement can be reached or if  
11 AT&T and Cox's concerns can be met, Staff believes the current schedule can be adhered to and that  
12 many of the concerns raised by AT&T and Cox related to the Agreement's compliance with the  
13 Competitive Telecommunications Service Rules and the agreed upon Revenue Requirement, can be  
14 effectively addressed through the evidentiary hearing process. The evidentiary hearing process will  
15 also allow all parties an opportunity to subject the Agreement to intense public scrutiny and  
16 examination, and should address any lingering concerns that the process is not open or that the  
17 parties and the public are being excluded from the process.

18 Some of AT&T and Cox's comments regarding the Agreement's compliance with Rule 1108  
19 appear to be the product of a misunderstanding of the Settlement Agreement's provisions. Contrary  
20 to the assertions of both AT&T and Cox, Rule 1108 remains generally applicable to Qwest, despite  
21 the Settlement Agreement. Qwest cannot move individual services from Basket 1 to Basket 3  
22 without meeting the Rule 1108 requirement.

23 There are only two exceptions to this rule. One of the exceptions allows Qwest to place new  
24 services into Basket 3. Under the second exception, Qwest can combine Basket 1 and Basket 3  
25 services and place the packages into Basket 3 without complying with Rule 1108 requirements.  
26 However, each package must impute the retail price of R1 service if included in the package and the  
27 Total Service Long Run Incremental Cost ("TSLRIC") of any other services included. As far as  
28 AT&T and Cox's concern about the plan's six month review period for competitive classification  
not being applicable to them, and therefore discriminatory, Staff would only point out that this

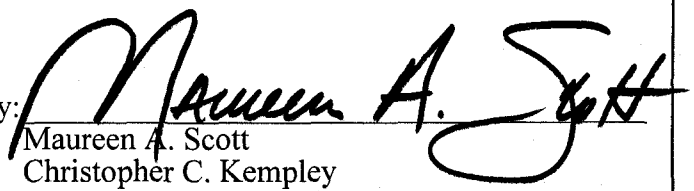
1 appears to be a red herring since all of AT&T and Cox's services are already classified as  
2 competitive making the review period generally inapplicable to them.

3 As far as the revenue requirement, there is nothing arbitrary about a vigorously negotiated  
4 compromise of the revenue requirement that is not accompanied with detailed issue-by-issue findings  
5 in favor of specific parties on each of the myriad of adjustments proposed in this case. AT&T and  
6 Cox have been afforded the opportunity to fully present their revenue requirement evidence in  
7 opposition to the Settlement Agreement and modification of the existing procedural schedule would  
8 not change this opportunity.

9 **IV. CONCLUSION**

10 Staff at all times took steps to ensure that the settlement process was open and that all parties  
11 had a meaningful opportunity to participate. Absent continued negotiations, Staff believes that the  
12 substantive concerns raised by AT&T and Cox can be best resolved through the evidentiary hearing  
13 process. As for the scheduling and/or due process issues raised by AT&T and Cox, Staff believes  
14 these matters are best left to the sound discretion of the presiding Administrative Law Judge.

15 RESPECTFULLY SUBMITTED this 21st day of November, 2000.

16  
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